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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jun 28, 2018

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

RAYMOND BALESTRA,
individually and on behalf of all others
similarly situated,

Plaintiff,

v.

GIGA WATT, INC.; GIGAWATT PTE LTD; CRYPTONOMOS PTE LTD;
and DAVE CARLSON,

Defendants.

No. 2:18-CV-00103-SMJ

ORDER APPOINTING LEAD PLAINTIFF AND COUNSEL

Before the Court, without oral argument, is Movant Alex McVicker's Motion for Appointment as Lead Plaintiff and Approval of Selection of Counsel, ECF No. 13. For the reasons that follow, the Court grants the motion to appoint Movant as lead plaintiff and approves Movant's selection of Levi & Korsinsky and Silver Miller as Co-Lead Counsel and Breskin Johnson & Townsend as liaison counsel.

BACKGROUND

This class action alleges violations of the Private Securities Litigation Reform Act ("PSLRA"), 15 U.S.C. § 78u-4, arising from Defendant Giga Watt's 2017 initial coin offering campaign. Giga Watt is a startup firm located in

1 Wenatchee, Washington, that hosts cryptocurrency mining facilities at sites
2 throughout Central and Eastern Washington. Cryptocurrency is a form of digital
3 or virtual currency that uses cryptography for security. Common cryptocurrencies
4 include Bitcoin, Ether, and Litecoin. Like traditional forms of currency,
5 cryptocurrency can be bought and sold on digital exchanges. However, a person
6 can also obtain cryptocurrency through a process known as “mining.” ECF No. 1
7 at 10. Put simply, an individual can mine cryptocurrency by using his or her
8 computer to process and verify digital currency transactions. *Id.* After the
9 computer processes a certain amount of information, the computer’s owner earns
10 some of the cryptocurrency. *Id.* at 11. This process requires powerful, specialized
11 computer hardware, energy, and space to house the computers. *Id.* To
12 accommodate this need, Giga Watt hosts a mining facility that houses and services
13 computers used for mining cryptocurrency. *Id.* at 12–13. Giga Watt also sells
14 specialized computer hardware used for mining. *Id.*

15 Giga Watt held an initial coin offering campaign that ran from May 19,
16 2017, through July 31, 2017. *Id.* at 14. Similar to an initial public offering,
17 companies issue customized cryptocurrency tokens in exchange for other,
18 established forms of cryptocurrency to raise capital. Participants in Giga Watt’s
19 initial coin offering could contribute Bitcoin, Ether (the token for Ethereum), or
20 U.S. dollars in exchange for either: (1) cryptocurrency tokens issued by Giga

1 Watt, called “WTT,” which represented the right to use Giga Watt’s Bitcoin
2 mining hardware rent-free for 50 years; or (2) Bitcoin mining equipment to be set
3 up and deployed at Giga Watt’s facility. Giga Watt valued the WTT tokens at
4 approximately \$1.00–\$1.20, during the initial coin offering. *Id.* at 14–16.

5 Movant asserts that he expended 5.05 Ether in the Giga Watt initial coin
6 offering to purchase 1,876 WTT. Movant further alleges that he spent an
7 additional 2.3207119 Bitcoin and 268.1 Litecoin to purchase specialized computer
8 hardware for mining offered by Giga Watt in connection with the initial coin
9 offering. Movant alleges that, as of May 2018, Giga Watt’s WTT tokens have
10 been delisted from the majority of digital currency exchanges and have become
11 thinly traded where listed. In contrast, the value of 5.05 Ether is approximately
12 \$3,535 during this same period. Because the Giga Watt tokens have little to no
13 value, Movant asserts that he has suffered a loss of approximately \$3,535.

14 **LEGAL STANDARD**

15 The PSLRA, 15 U.S.C. § 78u-4(a), governs the requirements for appointing
16 a lead plaintiff in securities litigation. The Act provides a three-step process for
17 identifying the lead plaintiff. First, the plaintiff that filed the action must publicize
18 the pendency of the action, the claims made, and the purported class period. 15
19 U.S.C. § 78u-4(a)(3)(A). The notice must also state that “any member of the
20

1 purported class may move the court to serve as lead plaintiff.” 15 U.S.C. § 78u-
2 4(a)(3)(A)(i).

3 Next, the district court must identify the “presumptively most adequate
4 plaintiff.” The act defines the presumptive lead plaintiff as the plaintiff who “has
5 the largest financial interest in the relief sought by the class” and “otherwise
6 satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.” 15
7 U.S.C. § 78u-4(a)(3)(B)(iii)(I). To determine whether the presumptive lead plaintiff
8 meets the Rule 23 requirements, the Court looks to the presumptive lead plaintiff’s
9 complaint and sworn certification.

10 In the third step of the process, the court must give other plaintiffs an
11 opportunity to rebut the presumptive lead plaintiff’s showing that it satisfies Rule
12 23’s typicality and adequacy requirements. 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II). At
13 this stage, the Court may evaluate evidence presented by competing plaintiffs that
14 could challenge the presumptive lead plaintiff’s ability to meet the adequacy and
15 typicality requirements.

16 DISCUSSION

17 A. Notice

18 Notice was properly given pursuant to 15 U.S.C. § 78u-4(a)(3)(A)(I). A press
19 release was originally published on March 23, 2018, on Business Wire, a nationally-
20 distributed business wire service, announcing the pendency of the action and

1 informing class members of their right to file a motion seeking appointment as lead
2 plaintiff no later than 60 days from the notice date. ECF No. 14 at 9.

3 **B. Appointment of Lead Plaintiff**

4 The PSLRA sets forth a rebuttable presumption that the “most adequate
5 plaintiff,” is the plaintiff who has the largest financial interest in the relief sought
6 by the class and otherwise satisfies the requirements of Rule 23 of the Federal Rules
7 of Civil Procedure. 15 U.S.C. § 78u-4(a)(3)(B)(iii)(l).

8 The Complaint defines the class as “all individuals and entities who
9 transferred to Giga Watt any fiat currency or digital currency to invest in the Giga
10 Watt [initial coin offering].” ECF No. 1 at 9. During Giga Watt’s initial coin
11 offering, Movant expended approximately 5.05 ETH to purchase 1,876 WTT
12 Tokens have been delisted from the majority of exchanges and has become thinly
13 traded where it is listed. Movant alleges that the WTT Tokens are essentially
14 worthless, while the 5.05 ETH was worth approximately \$3,535. Movant is the only
15 plaintiff moving for appointment, and is therefore the applicant with the greatest
16 financial interest at stake.

17 Because Movant has the largest financial interest, the Court “must appoint
18 that plaintiff as lead, unless it finds [that plaintiff] does not satisfy the typicality or
19 adequacy requirements” of Fed. R. Civ. P. 23(a). *In re Cavanaugh*, 306 F.3d at 732.
20 A plaintiff satisfies the typicality requirement when he has suffered the same

1 injuries as absent class members as a result of the same conduct by the defendants.
2 *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992). Here, Movant,
3 like all other members of the putative class, purchased WTT tokens from
4 Defendants during the Giga Watt initial coin offering. Movant suffered similar
5 damages resulting from the tokens' deflated value. Moreover, it does not appear
6 that Movant is subject to any unique or special defenses. Accordingly, based on the
7 materials submitted by Movant to the Court, it appears that Movant satisfies the
8 typicality requirement.

9 Rule 23(a)'s adequacy requirement is satisfied upon an acceptable showing
10 that the class representative and its counsel do not "have any conflicts of interest
11 with other class members" and that the class representative and its counsel will
12 "prosecute the action vigorously on behalf of the class." *Staton v. Boeing Co.*, 327
13 F.3d 938, 957 (9th Cir. 2003). The Court finds that Movant has made a sufficient
14 showing of adequacy here. It appears that Movant's interests are aligned with those
15 of the putative class such that Movant has sufficient interest in the case to ensure
16 vigorous prosecution. Further, there is no evidence of antagonism between Movant
17 and the other putative class members.

18 Because the Court finds that Movant is the plaintiff with the greatest financial
19 interest in the litigation who also satisfies the requirements of Rule 23, Movant is
20 the presumptive lead plaintiff. No other class members have come forward to

1 challenge Movant's application as lead plaintiff. Accordingly, the Court appoints
2 Movant as the lead plaintiff.

3 **C. Appointment of Lead Counsel**

4 Under the PSLRA, the lead plaintiff is given the right, subject to court
5 approval, to "select and retain counsel to represent the class." 15 U.S.C. § 78u-
6 4(a)(3)(B)(v). "[I]f the lead plaintiff has made a reasonable choice of counsel, the
7 district court should generally defer to that choice. *Cohen v. U.S. Dist. Court*, 586
8 F.3d 703, 712 (9th Cir. 2009).

9 Movant has selected and retained Levi & Korsinsky and Silver Miller as the
10 proposed Co-Lead Counsel and Breskin Johnson & Townsend as proposed liaison
11 counsel. Breskin Johnson & Townsend submitted its firm resume along with the
12 firm resumes of Silver Miller and Levi & Korsinsky. ECF No. 14 at 12–56. Each
13 firm has considerable experience litigating securities class actions. Given the firms'
14 substantial experience in the area of securities fraud class action lawsuits, the Court
15 defers to Movant's choice of counsel.

16 Accordingly, **IT IS HEREBY ORDERED:**

17 1. Movant's Motion for Appointment as Lead Plaintiff and Approval of
18 Selection of Counsel, **ECF No. 13**, is **GRANTED**.

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IT IS SO ORDERED. The Clerk's Office is directed to enter this Order and provide copies to all counsel.

DATED this 28th day of June 2018.

SALVADOR MENDOZA, JR.
United States District Judge